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04-344

December 11, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

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Federal Communications Commission
Office of the Secretary

Re: Public Notice DA 03-3669

Dear Ms. Dortch:

On behalf of Nauticast Schiffsnavigationssysteme AG, we are transmitting herewith an original and four (4) copies of its "Comments" in the above-referenced matter.

Should there be any questions concerning the enclosure, kindly communicate directly with undersigned counsel.

Very truly yours,

KAYE SCHOLER LLP

By:


Bruce A. Eisen

Enclosure

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of)	
)	
MariTEL, Inc.)	
)	
Proposal to Serve as Automatic Identification)	Public Notice DA 03-3669
System (AIS) Frequency Coordinator)	

**COMMENTS OF
NAUTICAST SCHIFFSNAVIGATIONSSYSTEME AG**

Nauticast Schiffsnavigationssysteme AG ("Nauticast"), by its attorneys, hereby submits its comments in response to the Commission's above-referenced Public Notice DA 03-3669, released November 19, 2003 ("Public Notice"). By these comments, Nauticast opposes the November 7, 2003 request filed by MariTEL, Inc. ("Maritel") to serve as the Automatic Identification System ("AIS") frequency coordinator. In support thereof, the following is shown.

Nauticast has already filed comments with regard to the November 7, 2003 Public Notice, DA 03-3585, opposing an Emergency Petition for Declaratory Ruling filed by Maritel and supporting a rulemaking petition filed by the National Telecommunications and Information Administration ("NTIA"). Therein, Nauticast showed that Maritel had placed its own private interests before those of the country's security by requesting the Commission to issue a ruling that AIS transmitters should be precluded from operation on Channels 87B and 88B or any other channel designated for use by VHF public coast shore stations. Nauticast further demonstrated

that Maritel's position would have potentially destroyed AIS manufacturers like Nauticast, and that the multitude of ships that had already been fitted and will be fitted shortly with AIS equipment using the subject frequencies would be compromised if those channels were not used. Most importantly, Nauticast showed that the United States homeland security could be compromised if Maritel's Emergency Petition were granted.

As the Public Notice recites, pursuant to Section 80.371(c)(3) of the Commission's rules, Maritel and the United States Coast Guard had agreed to designate maritime VHF Channels 87A/B for AIS use. In 2002, the NTIA authorized the Coast Guard to utilize Channel 88B for AIS, and the Commission's Wireless Telecommunications Bureau and Office of Engineering and Technology released public notices reflecting the use of those channels under existing ship licenses. Maritel unilaterally terminated its agreement with the Coast Guard in 2003. This resulted in Maritel's emergency petition which was opposed by Nauticast and a number of other parties.

Maritel's November 7, 2003 proposal allegedly would resolve questions concerning the use of Channels 87B and 88B for AIS. Maritel, as frequency coordinator, would accommodate and monitor NTIA's request for nationwide use of Channel 87B for AIS, while Maritel would remain the licensee of the channel, administering it for the benefit of the Coast Guard and ships at sea. In this capacity, Maritel "would process maritime mobile service identity ("MMSP") applications and maintain a database of all AIS transponders on vessels, irrespective of whether the vessels' carriage of the transponder is mandatory or voluntary, including foreign flag vessels required to carry AIS equipment under the international convention for the safety of life at sea ("SOLAS Convention")." It would also provide AIS Information Services to vessel operators,

port and harbor authorities, and state and local governments. It would do this for a fee, and includes in its proposal a fee schedule for AIS frequency coordination services. In return, it would agree to the dedication of Channels 87B and 88B for nationwide AIS use, subject to certain conditions, all of which assist its own agenda.

The Commission should reject Maritel's proposal to be the exclusive AIS frequency coordinator. To begin with, Nauticast hereby incorporates by reference its December 1, 2003 Comments filed in response to the Commission's November 7, 2003 Public Notice. Nauticast showed in that response that there existed no valid reasons why Channels 87B and 88B could not be used nationwide for AIS operation, just as they are pursuant to international agreement. The 1997 World Radio Communication Conference designated Channels 87B and 88B for AIS use on the high seas and there would be a myriad of problems created if an exception were made for American waters. NTIA clearly stated the salient point of its position in its Petition for Rulemaking: the security of the United States as well as the safety of the ships that use its waterways cannot be placed in jeopardy simply because Maritel has requested the Commission to withdraw the authorization of shipborne users to operate on Channels 87B and 88B.

Maritel now offers a fallback position that would allow it to control matters relating to the subject channels. Maritel proposes that it be elevated to the position of frequency coordinator for AIS, thereby in part avoiding the consequences of its failure to construct pursuant to Section 80.49 of the Commission's Rules. Nauticast referenced Maritel's construction difficulties in its December 1, 2003 Comments, and that deficiency was mirrored in other filings as well. Nevertheless, on December 4, 2003, the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, released an Order, DA 03-3614, that granted Maritel a

waiver of the rules to extend the five-year construction deadline for Maritel's maritime VHF public coast station areas. In granting the waiver, however, the Commission did not attempt to resolve the controversy over Channels 87B and 88B. On the contrary, the Order recites that the relief granted in no way authorizes any operations that could interfere with maritime safety or homeland security and that, further, the grant of the extension request did not bear on the pending dispute regarding AIS operations on Channel 87B and 88B.

It would be excessive for the Commission to grant Maritel a waiver of the build-out rules and to nevertheless cloak Maritel with the for-profit privilege of frequency coordinator when its prior construction failures were largely due to its own economic decisions. It would not only be excessive, it would be unfair to mariners everywhere.

Of course, if the Commission denies Maritel's emergency petition and thereby allows the entire international community to use Channels 87B and 88B for AIS, there will be no need to assign frequency coordination to any party, for AIS would not require a coordinator to oversee operation of the system. However, if any entity were needed to coordinate AIS, only the United States government should be empowered to do so, not an untested, private company whose greater motivation would be to recoup funds from mariners everywhere. The Commission should not endorse a system by which an additional layer of costs would be passed on to mariners utilizing AIS within our waters. It is even possible that placing a coordination function in Maritel's hands would encourage non-compliance with the established international standard because of the additional, and unnecessary costs associated with meeting Maritel's fee schedule. Worse, every ship that fails to comply with a fee based frequency coordination plan, presents an

additional risk to our country's homeland security.¹

The next step for AIS will involve the dramatic expansion of both mandated and discretionary carriage. The United States has already issued rules which have expanded coverage to certain smaller vessels. Increased requirements and additional layers of regulation will undoubtedly be met by more opposition from those regulated, especially smaller vessels, if Maritel-like fees are imposed on top of initial product/installation costs. But perhaps even more important than mere opposition, compliance with additional standards may be avoided because of the economics brought to bear on mariners who operate smaller vessels. Apart from those ships that must carry AIS, other ship and boat owners will have the option to carry them. The greater the number of vessels using our waterways that do so, the safer the waterways will be. It would simply transcend reason to place obstacles in the way of voluntary carriage that will, among other matters, undercut our homeland security.


¹ The issue of non-compliance is not conjectural. The Commission may take official notice of the fact that emergency position indicating radiobeacons (EPIRBs), which are designed to alert rescue authorities and to indicate a ship's location, have been mandated by the Safety Of Life at Sea Convention. However, some nations have not required compliance in light of the costs associated with implementation. Similarly, certain classes of ships are supposed to comply with requirements of the Global Marine Distress and Safety System by, *inter alia*, carrying search and rescue transponder equipment (SART). The costs involved in the installation of such equipment have also been avoided by countries and ship owners that chose not to require compliance.

In light of the foregoing, Maritel's proposal to serve as AIS frequency coordinator should be denied.

Respectfully submitted,

NAUTICAST SCHIFFSNAVIGATIONSSYSTEME AG

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December 11, 2003

CERTIFICATE OF SERVICE

I, Toni R. Daluge, a secretary in the law firm of Kaye Scholer LLP, do hereby certify that on this 11th day of December, 2003, a copy of the foregoing "Comments of Nauticast Schiffsnavigationssysteme A.G." was sent via United States mail, postage prepaid, to the following:

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